IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24587 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER - Petitioner(s)
Versus
M.K. SHRIMALI,CONDUCTOR BADGE NO.25127 - Respondent(s)

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Appearance :
MRS VASAVDATTA BHATT for Petitioner(s) : 1,
MR BHARAT JANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 08/03/2006

ORAL JUDGMENT

1. Heard learned advocate Ms. Vasavdatta Bhatt appearing on behalf of the petitioner and learned advocate Mr. Bharat G. Jani appearing on behalf of the respondent.

2. The petitioner–Corporation has challenged the

award passed by the Industrial Tribunal in Reference (I.T.) No. 184 of 2002 dated 2nd May 2005, wherein Industrial Tribunal, Ahmedabad has modified the punishment order of stoppage of five increments with cumulative effect. It has been modified without cumulative effect with a direction that workman is not entitled for any amount of arrears because of said modification.

3. This Court has issued rule and granted ad-interim relief in terms of paragraph – 7(C) by order dated 26th December 2005. Today, the matter is kept for hearing of interim relief. Both the learned advocate for the respective parties are agreed to decide the matter finally. Accordingly, both the learned advocates have been heard.

4. Learned advocate Ms. Vasavdatta Bhatt has submitted that workman was working as a Conductor on 2nd October 1997 in route of Kheralu to Idar. Meanwhile, his bus was checked at Nava Madhva. On that occasion, certain passengers were found without tickets though fare was collected by the concerned workman. In all, 21 passengers were found with tickets and seven passengers were found without tickets. Ultimately, charge-sheet was served to the workman concerned and after

completion of departmental inquiry, punishment order was passed by the competent authority imposing the punishment of stoppage of seven increments with cumulative effect by order dated 15th January 1999. Thereafter, workman has filed first appeal before the first appellate authority which was rejected. Then in second appeal, the said punishment was modified by the second appellate authority to stoppage of five increments with cumulative effect without giving any financial benefit to the workman. Against that, the industrial dispute has raised by the workman which was referred for adjudication. Before the Industrial Tribunal, statement of claim was filed by the workman and reply was submitted by the petitioner – Corporation. The Corporation has produced certain documents relating to the departmental inquiry before the Industrial Tribunal. The respondent – workman has not disputed the legality and validity of the departmental inquiry vide exh.21 and either side has not laid any oral evidence before the Tribunal. Ultimately, the Tribunal has considered that whether workman is entitled for any relief in respect of the dispute raised by him. The Industrial Tribunal had discussed the merits of the matter and ultimately, the Industrial Tribunal has considered the explanation given by

the workman that at the time of checking, road booking was continued and bus was checked near distance. The incident occurred because of road booking and way bill was open at the time when the bus was checked. The explanation of workman was that he had not recovered any amount of fare from the passengers. The statement of one passenger Shri Miyaram Raghuram Joshi which was narrated the correct facts relied by the workman. Ultimately, the Industrial Tribunal has considered the default card of the workman and explanation of the workman come to the conclusion that if said punishment which has been imposed by second appellate authority, if it is reduced and modified without giving any benefit of arrears of salary that will meet to end of justice. The Industrial Tribunal has also come to the conclusion that charge of recovering the fare from the passenger is not proved and S.T. cash of the workman was not checked by the checking staff. Therefore, one of the reason is also that the charge levied against the workman is no found to be proved. Ultimately, the Industrial Tribunal after re-appreciating the evidence on record come to the conclusion that punishment imposed by the second appellate authority is required to be modified.

5. I have considered the submissions made by both the learned advocate for the respective parties. Learned advocate Ms. Vasavdatta Bhatt submitted that the Industrial Tribunal has no jurisdiction to interfere in such circumstance. Learned advocate Mr. Bharat Jani submitted that respondent – workman has already obtained voluntary retirement from the Corporation on 31st January 2006. I perused the award passed by the Industrial Tribunal and I have also considered the reasoning given by the Industrial Tribunal. The Industrial Tribunal has jurisdiction to interfere with the punishment, in case, if, it is found that punishment is harsh, unjustified or arbitrary. The Industrial Tribunal has jurisdiction to examine the legality and validity of the punishment order which was imposed by the employer and doing so, the Industrial Tribunal can examine justness of the punishment order which was passed by the employer. So, according to my opinion, Industrial Tribunal has power and jurisdiction to interfere with such punishment if Industrial Tribunal is satisfied while deciding the legality and propriety of the punishment order imposed by the competent authority. The Industrial Tribunal has jurisdiction under Section 10 read with IInd Schedule and IIIrd Schedule. Therefore, the contentions raised by

learned advocate Ms. Vasavdatta Bhatt are not accepted. The same are rejected. Considering the reasoning given by the Industrial Tribunal that looking to the evidence on record, the charge which was levied against the workman not found to be proved. The facts of collecting fare was not proved in the departmental inquiry. At the time, when bus was checked, road booking was continued. Way bill was opened. S.T. cash was not checked by the checking staff. These are the circumstances which has taken into account by the Tribunal while modifying the punishment. It is also necessary to note that now workman has already obtained voluntary retirement on 31st January 2006, no financial burden has been imposed upon the petitioner – Corporation by the Tribunal and it is merely a modification without any financial burden upon the Corporation. Therefore, according to my opinion, Industrial Tribunal has rightly examined the matter for that he having the jurisdiction to interfere with the punishment and for that, Industrial Tribunal has not committed any error which requires interference by this Court under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Accordingly, present petition is dismissed. Rule is discharged. Interim relief stands vacated.

[**H.K. RATHOD, J.**]

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